

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
JANUARY 26, 2009**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 26, 2009 at 2:02 p.m. in the City Council Chamber of the Melvin Municipal Office Building. The following Board members were present: Chair John Cross, Russ Parmele, Scott Brewington, Bill Strickland, Clinton Turner, Bryan Pearce and Ryan Shell. Staff present were Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator and Jerry Kontos, City Attorney's Office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Cross also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES:**

Mr. Brewington moved to approve the minutes of the December 22, 2008 meeting, seconded by Mr. Strickland. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Rawls Howard and Loray Averett were sworn in as to their testimony during today's meeting.

**OLD BUSINESS:** None

**NEW BUSINESS**

**VARIANCE**

- (a) **BOA-09-01 119 KENSINGTON ROAD Ronald and Victoria Small request a variance from the minimum rear setback requirement. Violation: A proposed detached garage will encroach 2.5 feet into a 5-foot rear setback. Section 30-4-8.2(B), Present Zoning-RS-9, BS-23, Cross Street-Sylvan Road. (GRANTED)**

Rawls Howard stated that the applicant is proposing to construct a detached accessory garage which will encroach 2.5 feet into a 5-foot minimum rear setback. The proposed garage is planned for the same footprint as the one that was recently destroyed by a tree falling through it. The lot is located at the northeastern intersection of Kensington Road and Sylvan Road. The property is a corner lot and contains a single family dwelling. Tax records indicate the dwelling was constructed in 1951. The lot contained a detached accessory garage that was built prior to the July 1, 1992 Unified Development Ordinance. The lot dimensions are approximately 60 feet x 150 feet x 74 feet x 150 feet and contains approximately 10,000 square feet.

The applicant is proposing to construct a detached garage. The location for the proposed garage will be in the same footprint as the previous garage. The applicant has made mention that a recent wind storm uprooted a tree and demolished the existing garage. The previous garage was built prior to July 1, 1992 and would have used different setback requirements than the current Ordinance requirements.

The previous Ordinance allowed detached buildings that were located in single family districts and that were less than 750 square feet to be located 3 feet from the interior lot lines. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

Chair Cross asked if there was anyone present wishing to speak on this matter.

Ron Small, 119 Kensington Road, the applicant, was sworn in and presented additional photos for the Board members' review. He stated that a wind storm on the morning of December 31, 2008, that knocked over a large white oak tree that fell on the garage and demolished the structure. The advice of the insurance agent and several contractors were for them to tear down the remaining structure as soon as possible. What remains is the concrete slab, the driveway and a little bit of the foundation and they left the footings in place until he proceeded with the rebuild plan for the structure. This was not a personal decision or something that they just decided to do. The garage has been in existence since the house was built over 50 years ago and shows up on the 1955 aerial photo of the property. He also submitted a notarized letter from the adjacent property owners showing support of the project and the variance request. There is also support from the Sunset Hills Neighborhood Association. He pointed out that he hopes to be able to place the new structure in the same footprint, with no additional square footage. He answered questions for clarification for the Board members.

There was no one speaking in opposition to the request.

The Board members expressed that they felt that the other existing trees may pose a big risk to the new structure. They also stated that they felt there was no problem with placing the new structure in the same place as the demolished structure and since the neighborhood association had no objections, they felt that it was an agreeable plan.

Mr. Pearce moved that in the matter of BOA-09-01, 119 Kensington Road, the findings of fact as presented by staff be incorporated into the findings be incorporated by reference and the Zoning Enforcement Officer be overruled and the variance be granted, as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance because if the applicant complies with the ordinance he can make no reasonable use of the property because there are other trees existing on the property that must be removed and it prevents the garage from being built in a different location. The hardship of which the applicant complains results from unique circumstances to the applicant's property because these trees pre-existed his ownership of the property and have been there for many years, as evidenced by their size. The hardship results from the application of this ordinance to the property because the pre-existing structure fell under the prior ordinance, therefore, this is a situation where the ordinances conflict each other. The hardship is not the result of the applicant's own actions because the trees pre-existed his ownership of the property and it was not his fault that the tree fell and destroyed the existing

building. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because ordinance provides for fairness. The granting of the variance assures the public safety and welfare and does substantial justice because it allows the property owner to make the best use of his property within the strictures of the ordinance, seconded by Mr. Turner. The Board voted 6-1 in favor of the motion. (Ayes: Pearce, Brewington, Strickland, Turner, Parmele and Shell. Nays: Cross.)

**OTHER BUSINESS:**

None

**ABSENCES:**

The absence of Mr. Pinto was acknowledged.

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There being no further business before the Board, the meeting adjourned at 3:17 p.m.

Respectfully submitted,

John Cross, Chairman  
Greensboro Board of Adjustment

JC/jd